IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 11TH DECEMBER 2007 / 20TH AGRAHAYANA 1929

Bail Appl..No. 7462 of 2007()

Cr.572/07 OF HARBOUR POLICE STATION

: PETITIONER/ACCUSED NO.6

T.E.NAZARUDHEEN, S/O.T.K.NAZARUDHEEN,
AGED 45 YEARS, THENAMMACKAL HOUSE,
KANJIRAPPALLY P.O., KANJIRAPPALLY,
KOTTAYAM DISTRICT.

BY ADV. SRI.GEORGE MATHEW

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REP. BY
C.I. OF POLICE, HARBOUR POLICE STATION,
KOCHI CITY, THROUGH PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 11/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.7462 of 2007

Dated this the 11th day of December, 2007

ORDER

Application for anticipatory bail. The petitioner is the 6th accused. Altogether there are 16 accused persons. The crime is now being investigated for the offence punishable, inter alia, under Sections 457, 380 and 411 I.P.C.

2. The crux of the allegations is that the coffee beans in a container in the Cochin Port Trust area were thieved by the accused persons from the container. The specific role alleged against the petitioner is that he with the full contumacious knowledge that it was an item of stolen property helped and brokered the deal between accused 1 and 8 of such stolen property. Thus it is now specified that the precise allegation against the petitioner is only of having committed the offence punishable under Section 411 r/w 34 I.P.C. So far as the offences under Sections 457 & 380 I.P.C are concerned, the petitioner does not face any allegation.

3. The learned counsel for the petitioner submits that the petitioner is innocent and the allegations against him are being

raised without any valid reasons. He accepts the prosecution version that the 1st accused had contacted him with a request to help him to dispose of coffee beans. He had no knowledge that these were stolen coffee beans. He had conducted such business earlier. He had discontinued that business. He could not help the 1st accused by purchasing the coffee beans. However, he gave the phone number of the 8th accused, a dealer, who may have purchased the coffee beans if he wanted the same. Except this, the petitioner had absolutely no contumacious role in the transaction. The petitioner prays that direction under Section 438 Cr.P.C may be issued in favour of him.

4. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that the available indications clearly show that the petitioner had played a proactive role in the disposal of the stolen article which were in the possession of the 1st accused. The 1st accused on the instructions of the petitioner had allegedly acted to remove the coffee beans from the containers in which they were and to repack them in different containers. He had played an active role in the disposal

of the stolen coffee beans by the 1st accused to the 8th accused knowing fully that the same was stolen property. The learned Public Prosecutor submits that the petitioner has to be arrested and interrogated. Grant of anticipatory bail to the petitioner would hamper the smooth course of investigation.

5. Having considered all the relevant inputs, I find merit in the opposition by the learned Public Prosecutor. The available indications do point to the complicity of the petitioner. I find merit in the submission of the learned Public Prosecutor that the investigator in a case like this must be given reason reasonable further to exhaustively question the petitioner and ascertain the relevant details. At any rate, I am unable to perceive any features in this case which can warrant or justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. This, I am satisfied, is a fit case where the petitioner must appear before the learned Magistrate having jurisdiction or the Investigating Officer and then seek bail in the regular and ordinary course.

5. This application is, in these circumstances, dismissed, but I may hasten to observe that if the petitioner surrenders before the Investigating Officer or the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

(R.BASANT, JUDGE)

rtr/-